

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial And Executive Nominations
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Today, the Judiciary Committee holds only the third confirmation hearing for nominations to the lower Federal courts since Justice Souter's May announcement that he intended to retire at the conclusion of the Court's term. We will hear today from four nominees for lifetime appointments to the Federal bench and thereby double the number of judicial nominees who have had hearings since April. The President is doing better and has begun sending more nominations to the Senate. This Committee needs to do better in considering the nominees. And the Senate has to do much better: Other than Supreme Court Justice Sotomayor, not a single judicial nominee has been considered by the Senate all year.

I thank Senator Whitehouse for chairing this hearing, and Senators Menendez, Lautenberg, Johnson, Nelson and Rockefeller for introducing the nominees. I also thank the Committee's Ranking Member, Senator Sessions, for his cooperation in preparing for this hearing. We will need to continue to work together to break the backlog of nominations that are pending before this Committee and the logjam of nominations that have been reported out of this Committee but have been stalled without Senate approval.

We did make some progress before the August recess after nearly three months of inaction. Before adjourning, the Senate confirmed 10 nominations reported by the Committee, many of which had been pending on the Senate's executive calendar since before the July Fourth recess. In fact, those nominations were the first to be confirmed since May 12 from among more than a score of nominees reported by the Senate Judiciary Committee. Even so, Senate Republicans would not consent to consider another 10 nominations, which remain on the Senate Executive Calendar. They include three judicial nominees, four nominees to head important divisions at the Justice Department, additional United States Attorneys, and the Chairman of the Sentencing Commission.

We must do better. As I have noted, with respect to judicial nominations, the Senate has not confirmed a single one of President Obama's 16 nominations for lifetime appointments to lower Federal courts -- even though the first of those nominations, that of Judge David Hamilton to the Seventh Circuit, was made in March, reported out of Committee in early June, and has the support of the Senate's senior Republican. Two other judicial nominations have been pending on the Senate's Executive Calendar since early June, despite strong bipartisan support. Judge Andre Davis's nomination to the Fourth Circuit was reported by the Committee on June 4 by a vote of 16-3, and Judge Gerard Lynch's nomination to the Second Circuit was reported by the

Committee on June 11 by voice vote. We should not further delay Senate consideration of these three well-respected, mainstream Federal judges.

Today we will hear from four more outstanding nominees for lifetime appointments to the Federal bench: Joseph A. Greenaway for the Third Circuit, Roberto A. Lange for the District of South Dakota, Irene Cornelia Berger for the Southern District of West Virginia, and Charlene Edwards Honeywell for the Middle District of Florida. All four nominees have been rated unanimously well qualified by the ABA's Standing Committee on the Federal Judiciary, the highest rating they could receive. All four should receive prompt consideration from the Committee and the full Senate.

Judge Joseph A. Greenaway has served for 13 years as a Federal judge for the District of New Jersey. A former Federal prosecutor, he also has worked as in-house counsel at a large corporation and as an attorney in private practice. These varied experiences should serve Judge Greenaway well once he is elevated to the Third Circuit.

The three district court nominees we will hear from today also have deep and varied experience. Roberto A. Lange has spent most of his career at a South Dakota law firm, where he is now a partner. As the head of the firm's litigation section, he specializes in complex commercial litigation. Over the years, he has worked with a wide variety of clients - from individuals to large corporations to a Native American tribe. Charlene Edwards Honeywell has served for the last eight years as a circuit judge in Tampa. Before that, she gained expertise in a wide variety of areas as a litigation attorney, a city attorney, and an assistant public defender. For the last 15 years, Irene Berger has served as a circuit judge in county court. Before that, she spent more than a decade as a prosecutor at both the State and Federal levels. If confirmed, Judge Berger will be the first African American on the Federal bench in West Virginia.

It is imperative that we move to fill the growing number of vacancies throughout the Federal courts. These vacancies have already risen to over 90, including 21 on the circuit courts. This alarming spike is only further fueled by the delays and inaction. In addition, 23 future vacancies have been announced. They will push Federal judicial vacancies close to 120 unless we begin to act on judicial nominations.

We worked very hard to fill vacancies during the last presidency. When I chaired this Committee and we had a President of the other party in the White House, we were able to reduce overall vacancies by two-thirds, from over 100 down to 34, and to reduce circuit court vacancies to single digits. Today, those vacancies have nearly tripled.

In the 17 months I served as Chairman during President Bush's first term with a Democratic majority, the Senate confirmed 100 of the President's judicial nominations. Indeed, despite the fact that President Bush did not make his first judicial nomination until May 9, nearly two months later than President Obama's first nomination, and despite the subsequent changeover in the majority in the Senate, we had confirmed four judicial nominations to lower courts before the August recess in 2001, including two circuit court nominations. Thus far this year, we have confirmed none.

I hope that Republican Senators do not seek to return to the practices of the 1990's, when they more than doubled circuit court vacancies through pocket filibusters of moderate and qualified

Clinton nominees. The crisis they created by refusing to consider many circuit nominees led to public criticism of their actions by Chief Justice Rehnquist during those years.

I hope, instead, that both sides of the aisle will join together to treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. We should continue that progress rather than ratcheting down our productivity and increasing the partisanship attendant judicial nominations.

In addition to the nominations of Judge Hamilton, Judge Davis, and Judge Lynch, seven nominations to important Executive Branch positions reported by this Committee remain pending on the Executive Calendar. All of these nominees -- Dawn Johnsen to be the Assistant Attorney General for the Office of Legal Counsel, Judge William K. Sessions to chair the U.S. Sentencing Commission, Tom Perez to be the Assistant Attorney General for the Civil Rights Division, Mary Smith to be the Assistant Attorney General for the Tax Division, Christopher Schroeder to be the Assistant Attorney General for the Office of Legal Policy, Steven M. Dettelbach to be the U.S. Attorney for the Northern District of Ohio, and Carter Mitchell Stewart to be the U.S. Attorney for the Southern District of Ohio - are well qualified and deserve prompt consideration by the full Senate.

The President needs nominees in place to run key divisions of the Department of Justice. Today we will hear from another of those nominees, Ignacia Moreno, whose nomination to head the Justice Department's Environment and Natural Resources Division comes with widespread support.

Ms. Moreno currently works for General Electric, where she oversees that corporation's compliance with state and Federal laws. Prior to that, she spent seven years in the Environment and Natural Resources Division, where she ultimately served as a Principal Counsel. I am confident that Ms. Moreno's significant experience will be put to good use if she is confirmed to return to the Justice Department.

I look forward to hearing from the nominees today and welcome them and their families to the Judiciary Committee.

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